

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #97-55**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of sales and use tax to parking fees collected at a city-county parking building.

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

The [BUILDING AUTHORITY OF A TENNESSEE COUNTY AND CITY] ("the Taxpayer") was established pursuant to the Tennessee Public Building Authority Act, Tenn. Code Ann. § 12-10-101 *et seq.* The Taxpayer is proposing to enter into a services agreement with a parking management company to assist the Taxpayer in the operation of

the public parking facilities located at the [TENNESSEE LOCATION OF A CITY-COUNTY PARKING BUILDING]. The Taxpayer also anticipates entering into a similar agreement to operate an additional parking garage.

Article 7 of the proposed agreement provides that the parking company “shall collect and hold in trust for and on behalf of the [Taxpayer] all monies collected from parking customers at the Facility . . . and shall deposit daily in the name of the [Taxpayer], and in the bank and the account designated by the [Taxpayer].” The parking company will accordingly act as an agent in collecting parking fees for the Taxpayer. Daily receipts will be deposited directly into an account owned by the Taxpayer.

ISSUE

Whether the receipts from the parking services are subject to sales tax.

RULING

The receipts from the parking services are not subject to sales tax.

ANALYSIS

Tenn. Code Ann. § 12-10-109 provides that

(a) Each public building authority created pursuant to this chapter shall be a public nonprofit corporation and a public instrumentality of the municipality with respect to which the authority is organized. The authority has the following powers, together with all powers incidental thereto or necessary for the performance of those hereinafter stated, to:

...

(5) . . . provide offstreet parking facilities in connection with any project;

Tenn. Code Ann. § 12-10-113 further states that

(a) The authority is hereby declared to be performing a public function in behalf of the municipality with respect to which it is organized and to be a public instrumentality of such municipality. Accordingly, **the authority and all properties at any time owned by it and the income therefrom** and all bonds issued by it and the income **therefrom shall be exempt from all taxation** in the state of Tennessee.

(Emphasis added).

In the case of *Madison Suburban Utility District v. Carson*, 232 S.W. 2d 277 (Tenn. 1950), similar statutory language exempting the property and revenues of a utility district

from all state, county and municipal taxation was construed to bar imposition of a sales tax on the utility district. The court reasoned that even though the tax was styled as a privilege tax, it was in practical effect a “tax levied by the state on the revenue of the appellant” and could not be applied to the utility district. *Madison Suburban Util. Dist.*, 232 S.W. 2d at 281.

The language of Tenn. Code Ann. § 12-10-101, *et seq.*, is clear in its intent that income derived from any property owned by entities such as the Taxpayer is exempt from tax.

Even though an outside company will collect and remit the parking fees, the company will be an agent of the Taxpayer. Accordingly, the sales of parking will not be subject to the sales tax.

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Tax Counsel

APPROVED: Ruth E. Johnson
Commissioner

DATE: 12/16/97